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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 DERRICK JEROME LEWIS,

12 Plaintiff,

13 v.

14 WELLSPACE HEALTH, et al.,

15 Defendants.  
16

No. 2:20-cv-00332 JAM AC PS

ORDER AND FINDINGS AND  
RECOMMENDATIONS

17 Plaintiff is proceeding in this action pro se. This matter was referred to the undersigned  
18 by E.D. Cal. R. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma  
19 pauperis (“IFP”) pursuant to 28 U.S.C. § 1915, and has submitted the affidavit required by that  
20 statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

21 I. SCREENING

22 A determination that a plaintiff qualifies financially for in forma pauperis status does not  
23 complete the inquiry required by the statute. The federal IFP statute requires federal courts to  
24 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
25 relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.  
26 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the  
27 complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of  
28 Civil Procedure (“Fed. R. Civ. P.”). Under the Federal Rules of Civil Procedure, the complaint

1 must contain (1) a “short and plain statement” of the basis for federal jurisdiction (that is, the  
2 reason the case is filed in this court, rather than in a state court), (2) a short and plain statement  
3 showing that plaintiff is entitled to relief (that is, who harmed the plaintiff, and in what way), and  
4 (3) a demand for the relief sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth  
5 simply, concisely and directly. Fed. R. Civ. P. 8(d)(1).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
8 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
9 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
10 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
11 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
12 denied, 564 U.S. 1037 (2011).

13 The court applies the same rules of construction in determining whether the complaint  
14 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court  
15 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must  
16 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
17 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
18 (1972). However, the court need not accept as true conclusory allegations, unreasonable  
19 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
20 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice  
21 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,  
22 556 U.S. 662, 678 (2009). To state a claim on which relief may be granted, the plaintiff must  
23 allege enough facts “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at  
24 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
26 Iqbal, 556 U.S. at 678.

27 A pro se litigant is entitled to notice of the deficiencies in the complaint and an  
28 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See

1 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as  
2 stated in Lopez v. Smith, 203 F.3d 1122 (9th Cir.2000)) (en banc).

## 3 II. THE COMPLAINT

4 The complaint states that plaintiff seeks relief for copyright infringements, Fourteenth  
5 Amendment violations, patent violations, antitrust and consumer credit violations, identity theft,  
6 and “government agency.” ECF No. 1 at 4. Plaintiff alleges that while he was being monitored at  
7 Wellspace Health his phone became controlled by an Xfinity internet account and hooked up to  
8 an office printer, and the phone account was switched without his consent. ECF No. 1 at 5.  
9 Plaintiff alleges that Wellspace employees, the Department of Healthcare Services, and Westcare  
10 are monitoring him, and are fraudulently giving false information about clients so they can  
11 receive Medi-Cal benefits. Id. Plaintiff alleges that bank accounts were opened, vehicles were  
12 purchased, homes were purchased, businesses were developed and sold, and he was not in control  
13 of his own life. Id. He has suffered homelessness and insomnia as a result, and seeks damages in  
14 the form of loss of earnings and pain and suffering. Id. at 6.

## 15 III. ANALYSIS

16 The complaint is vague and conclusory and does not contain facts supporting any  
17 cognizable legal claim against any defendant. Accordingly, the complaint must be dismissed for  
18 failure to state a claim. The court finds that the complaint consists entirely of fanciful and  
19 delusional allegations. The facts plaintiff alleges are not clearly tied to his legal claims, and the  
20 complaint lacks the “facial plausibility” of “factual content that allows the court to draw the  
21 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at  
22 678. For all these reasons, it is apparent that amendment would be futile. The undersigned will  
23 therefore recommend that the complaint be dismissed with prejudice.


## 24 IV. CONCLUSION

25 In accordance with the above, IT IS HEREBY ORDERED that plaintiff’s application to  
26 proceed in forma pauperis (ECF No. 2), is GRANTED;

27 Further, IT IS HEREBY RECOMMENDED that all claims against all defendants should  
28 be DISMISSED with prejudice.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
3 after being served with these findings and recommendations, plaintiff may file written objections  
4 with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
6 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
7 Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 DATED: March 17, 2020

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10 ALLISON CLAIRE  
11 UNITED STATES MAGISTRATE JUDGE  
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